

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

MARY LALIBERTE, *et al.*,

Plaintiffs,

v.

QUANTA SERVICES, INC., *et al.*,

Defendants.

Case No: 4:22-cv-03290

**PLAINTIFFS' NOTICE OF SUPPLEMENTAL AUTHORITY
IN OPPOSITION TO
DEFENDANTS' MOTION TO CERTIFY INTERLOCUTORY APPEAL**

Plaintiffs Mary Laliberte and Marie McKnight (collectively, "Plaintiffs"), individually and on behalf of the Quanta Services, Inc. 401(k) Savings Plan ("Plan") and a proposed class of participants and beneficiaries in the Plan, respectfully submit this Notice of Supplemental Authority, to bring the Court's attention to a recent unpublished opinion from the Court of Appeals for the Fifth Circuit that is relevant to Defendants' pending Motion to Certify Interlocutory Appeal (ECF No. 58): *Perkins v. United Surgical Partners Int'l, Inc.*, No. 23-10375, 2024 WL 1574342, at *1 (5th Cir. Apr. 11, 2024) (attached as Exhibit 1).

In a similar ERISA breach of fiduciary duty action, the Fifth Circuit in *Perkins* directly addressed and rejected the exact arguments advanced by Defendants (and rejected by the Court) in their motion to dismiss. Specifically, the Fifth Circuit noted that the district court had erred in dismissing the plaintiffs' duty of prudence claim where they alleged the defendants maintained the challenged investments despite the existence of similar, less expensive share classes. *See Perkins*, 2024 WL 1574342, at *3–4. This followed the Fifth Circuit's recognition that, like Plaintiffs here, "[a] plaintiff may allege that a fiduciary breached the duty of prudence by failing

to properly monitor investments and remove imprudent ones.” *Id.* at *2 (citing *Tibble v. Edison Int’l*, 135 S. Ct. 1823, 1829).

The Fifth Circuit in *Perkins* also rejected the defendants’ argument that plaintiffs must allege facts to rebut any “obvious alternative explanation” for fiduciaries’ failure to select investments that would have better served the plan at issue. *Id.* at *3. Instead, the Fifth Circuit reasoned that it could not credit the defendants’ after-the-fact explanation and “another plausible explanation is . . . mismanagement.” *Id.* Likewise, pointing to examples of allegedly prudent conduct applied to certain discrete areas of plan management does not “refute other instances” of mismanagement. *Id.* at *4.

Finally, the Fifth Circuit in *Perkins* reversed dismissal and remanded the plaintiffs’ failure to monitor claim since its dismissal was premised on the erroneous holding with respect to the breach of fiduciary duty claims. As the Court has already correctly held, failure to monitor claims are properly sustained where premised on plausible breach of fiduciary duty claims. *See* ECF No. 53, at 5–6.

The Fifth Circuit’s decision in *Perkins* confirms that the Court correctly denied Defendants’ motion to dismiss and should deny Defendants’ Motion to Certify Interlocutory Appeal.

Date: May 21, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned counsel certifies that a true and correct copy of the foregoing document was served via the Court's ECF/CM e-filing system to all counsel of record on May 21, 2024.

/s/ John S. "Jack" Edwards, Jr.
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